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September 5, 2002

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Room TWB-204
Washington, DC 20554

Re: WC Docket No. 02-157, *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization To Provide In-Region, InterLATA Services in New Hampshire and Delaware*

Dear Ms. Dortch:

AT&T Corp. ("AT&T") respectfully submits this letter in response to an *ex parte* letter submitted by Verizon on September 3, 2002, offering new and additional arguments for ignoring the failure of its switching rates in New Hampshire to satisfy a benchmark comparison with Verizon's switching rates in New York.¹ As explained below, none of these arguments solve the continuing failure of Verizon's rates to comply with TELRIC in New Hampshire.

The Failure Of Verizon's Switching Rates In New Hampshire To Satisfy A Benchmark Comparison With New York Precludes A Finding That Verizon's Switching Rates Satisfy Section 271. As AT&T explained in its initial and reply comments in this proceeding, a benchmark comparison of Verizon's switching rates in New Hampshire and New York is appropriate, and Verizon's New Hampshire rates fail the comparison.² Verizon's latest counterarguments have no more merit than their predecessors.

¹ See Ex Parte Letter dated September 3, 2002, from Richard T. Ellis (Verizon) to Marlene H. Dortch (FCC Secretary), WC Docket No. 02-157.

² AT&T Comments (July 17, 2002) at 6-8; *id.*, Lieberman Decl. ¶¶ 11-16; AT&T Reply

(1) Verizon's renewed assertion that a switching-only benchmark analysis exceeds the deferential role that the Commission has decided to play in reviewing state UNE pricing decisions under Section 271 (September 3 Verizon *ex parte* at 4-6) confuses two distinct issues: the degree of deference that the FCC should give to state commissions in reviewing their findings that RBOC prices for network elements comply with TELRIC, and the appropriate level of disaggregation of the elements to which the FCC applies its rate review, whether deferential or otherwise. On the latter issue, Congress has made clear that the scrutiny must, when necessary, focus on individual elements.

As AT&T has repeatedly noted in this proceeding, "TELRIC rates are calculated on the basis of *individual* elements." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1678 (2002) (emphasis added). Hence, a BOC's rates for a network element comply with Checklist Item 2 only if they are "based on the cost . . . of providing . . . *the* network element." 47 U.S.C. § 252(d)(1) (emphasis added). Indeed, Congress specifically singled out unbundled switching and unbundled transport as elements that must be offered separately and unbundled from the other. Competitive checklist item five requires Bell companies to offer "[l]ocal transport from the trunk side of a wireline local exchange carrier switch *unbundled from switching or other services*." 47 U.S.C. § 271(c)(2)(B)(v) (emphasis added). And competitive checklist item six requires Bell companies to offer "[l]ocal switching *unbundled from transport, local loop transmission, or other services*." *Id.*, § 271(c)(2)(B)(vi) (emphasis added). Verizon's silence concerning these provisions is telling.

(2) Equally without merit is Verizon's assertion that, as a practical matter, carriers "must also take local switching" when purchasing shared transport. September 3 Verizon *ex parte* at 6-8. Technology is not static, and advances in technology can lead to upheavals in industry make-or-buy decisions. Hence, the assumption that whatever form of CLEC entry occurs today is likely to continue unchanged into the future despite future changes in switching and transport technology is unsound competitive policy. One of the most important lessons of economic regulation is that regulators, no matter how knowledgeable and prescient, almost always harm competition when they try to anticipate and handicap the future path of competition in an industry, rather than simply creating a level playing field.³ If the Commission refuses to scrutinize the cost justification (if any) for Verizon's switching rates in New Hampshire on the assumption that Verizon's switching rates in isolation have "no competitive significance," the Commission's judgment will be a self-fulfilling prophecy. Whatever potential switching, unbundled from transport, would have offered as a vehicle for UNE-based entry will be unfulfilled if the Commission allows local Bell companies to manipulate their UNE prices to limit future competitive options to the ones permitted by existing technology. To ensure against this competitive foreclosure, the Commission must ensure that Verizon's prices for two major groups of UNEs, switching and transport, *both* comply with TELRIC. Lieberman/Pitkin Reply Decl. ¶ 14.

Comments (Aug. 12, 2002) at 3-11; *id.*, Lieberman/Pitkin Reply Decl. ¶¶ 4-31.

³ AT&T Reply Comments, Lieberman/Pitkin Reply Decl. (Aug. 12, 2002) ¶ 13 (quoting *Local Competition Order* ¶ 12 and recent speech by Chairman Powell).

(3) Verizon's contention that the commonality of per-minute switching costs with costs of "other non-loop" elements such as shared trunk ports and signaling renders switching-only rate comparisons meaningless (Verizon Sept. 3 *ex parte* at 9) is a red herring. AT&T's "switching only" benchmark analysis includes the revenues and costs of those elements as well. Lieberman Decl. ¶¶ 14-15; Lieberman/Pitkin Reply Decl. ¶ 23 n. 12.

(4) Verizon's claim that combined benchmarking of switching and other non-loop elements is appropriate because "states" make varying tradeoffs between switching and transport costs (Verizon Sept. 3 *ex parte* at 9-10) is equally unfounded. Verizon has offered no evidence that state regulators or legislatures have dictated what balance Verizon should strike between the goals of minimizing the costs of switching (by installing larger and fewer switches) and minimizing the cost of transport (by installing smaller but more numerous switches). In any event, the Commission runs of the Synthesis Model used in AT&T's benchmarking analysis take as a given Verizon's embedded switch locations, and Verizon's embedded host-remote relationships. Hence, the location, distribution and mix of switches deemed optimal by Verizon is reflected in AT&T's analysis. AT&T Reply Comments (Aug. 12, 2002) at 11; Lieberman/Pitkin Reply Decl. ¶¶ 19-34.

(5) Verizon's assertion that switching-only benchmarking is unreliable because the Synthesis Model tends to understate the switching investment needed to serve rural areas (Verizon Sept. 3 *ex parte* at 10-12) is unsupported by the agency findings from which Verizon selectively quotes. Quoting from findings of the Rural Task Force of the Federal-State Joint Board on Universal Service, Verizon asserts that "[t]he Synthesis Model significantly underestimate[s] central office Switching investment' for carriers serving rural areas" and also underestimates "Network Operations and Customer Operations expenses." *Id.* at 11 (quoting portions of Task Force and Joint Board findings). The focus of the quoted findings, however, was on "rural carriers," not the rural operations of Verizon and other RBOCs.

The term "rural carrier" refers to a statutorily-defined class of local telephone carriers that are relatively small and whose customers are primarily rural.⁴ Because of their small overall scale, statutory "rural carriers" obviously tend to have higher switching costs than does Verizon, even in its rural service areas. The portions omitted by Verizon from the first of the two findings it selectively quotes make this point clear. The finding reads in its entirety as follows:

The Synthesis Model significantly understated central office equipment (COE) Switching investment. This was likely due to the lack of economies of scale of the Rural Carriers, and the general tendency of the model to underestimate lines served.⁵

⁴ See CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, Recommended Decision released Dec. 22, 2000 ¶ 3 n. 9 (citing 47 U.S.C. § 153(37)).

⁵ See CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, Rural Task Force Recommendation to the Federal-State Joint Board (released Sept. 29, 2000) at 18 (4th bullet).

Verizon rural operations differ from those of the statutory “rural carriers” in both of these respects. Because Verizon purchases switching equipment from vendors on a consolidated, companywide basis, the discounted purchase price of a given piece of Verizon-owned switching equipment should be the same in rural areas as in Verizon’s more urban wire centers.⁶ And the “general tendency” of the TNS algorithm used by the Synthesis Model to “underestimate lines” for rural carriers in the absence of actual ARMIS line count data⁷ is likewise a non-issue here. Unlike statutory “rural carriers,” Verizon reports its actual ARMIS line count data for its entire local service territory, including its rural portions. The Synthesis Model runs used by AT&T for its New Hampshire benchmarking analysis were based on those ARMIS data.

For these and similar reasons, the Commission and the Rural Task Force have repeatedly emphasized that the recommendations of the Task Force apply “only to rural, insular, and high-cost areas *served by rural carriers*, and not to areas served by non-rural carriers.”⁸ Verizon’s assertion that, by the “same logic, the Model’s inputs are likely to understate costs even for non-rural carriers to the extent that they are serving more rural areas” (Sept. 3 Verizon *ex parte* at 11) is flatly at odds with this caveat.

(6) Verizon’s claim that applying a switching-only benchmark analysis would “render the 271 process unworkable” because there are too many individual rates for network elements to analyze individually (Verizon Sept. 3 *ex parte* at 12-14) is an attack on a straw man. No party in this case has asked the Commission to benchmark any disaggregated subset of loop or non-loop rates other than switching, let alone the “hundreds” of “recurring and nonrecurring” rates conjured up by Verizon. The relief that AT&T seeks is narrow and specific: that the Commission consider AT&T’s supplemental benchmark comparison of a single subset of nonloop rates—switching rates—and AT&T has assumed the burden of developing and producing this comparison itself.

Should AT&T (or any other party) propose in a future Section 271 proceeding to benchmark rates for any other subset of loops or non-loops, the Commission can consider the propriety of such a supplemental analysis at that time. As long as the Commission limits its consideration to the combinations of UNEs actually analyzed by the parties, however, the Commission’s task should remain within manageable bounds.⁹

⁶ *See id.*

⁷ *Id.*

⁸ *See* CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, Recommended Decision released Dec. 22, 2000 ¶ 6 n. 20 (emphasis added).

⁹ The Surface Transportation Board (formerly the Interstate Commerce Commission) has adopted this burden-limiting procedural device in analogous circumstances in railroad rate cases. *See Coal Rate Guidelines—Nationwide*, 1 I.C.C.2d 520, 534-44 (1985), *aff’d*, *Consolidated Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987) (limiting stand-alone cost analysis of railroad freight shipments in a rate case to the groupings of shippers and rail lines analyzed by the ratepayers); *Bituminous Coal—Hiawatha, Utah, to Moapa, Nevada*, 1987 WL 98994 (served

(7) Finally, Verizon's claim that its "switching usage" rate in New Hampshire fails the New York benchmark comparison by only a small margin ("approximately *1.5 hundredths of one cent*") is completely unresponsive to AT&T's concerns. *See* Verizon Sept. 3 ex parte at 15 (emphasis in original). As Verizon knows perfectly well, AT&T's switching benchmark analysis did not focus on the switching usage rate in isolation: AT&T's comparison included the costs of and rates for the switch port, switch figures and signaling as well. *See* AT&T Comments, Lieberman Decl. (July 17, 2002) at 6-7. For *those* elements, Verizon's New Hampshire rates flunk the New York benchmark comparison by a margin of 13 percent, or approximately *one dollar*. *Id.*

For the foregoing reasons, Verizon's Application fails to satisfy Checklist Item 2 and should be rejected.

Sincerely,

/s/ David M. Levy
David M. Levy

cc: Richard Kwiatkowski
Gary Remondino
Julie Saulnier
Victoria Schlesinger
Henry Thaggert
Tracey Wilson

July 23, 1987) at 2 (in rate cases, freight shippers have the right "to define the grouping of shippers and the rail lines which, in the shipper's view, will create the lowest cost transportation system"); *id.*, 1998 ICC LEXIS 364 (Nov. 30, 1988) (same); *id.*, 6 I.C.C.2d 1, 48-49 (1989).

VERIFICATION PAGE

I declare under penalty of perjury that the statements of fact in the foregoing ex parte letter are true and correct.

/s/ Michael Lieberman

Michael Lieberman

Executed on: September 5, 2002